

EMPLOYER STATUS DETERMINATION

West Texas and Lubbock Railroad Company, Inc.

Plainview Terminal Company

This is the determination of the Railroad Retirement Board concerning the status of West Texas and Lubbock Railroad Company, Inc. (WTLR) and Plainview Terminal Company (PTC) as employers under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). WTLR and PTC are part of the same corporate family under the control of RailAmerica, Inc., a holding company which the Board has previously ruled not to be covered under the RRA and the RUIA. (See B.C.D. 93-54, August 17, 1993.) Information about WTLR and PTC was furnished by Mr. Larry W. Bush, Controller of RailAmerica.

West Texas and Lubbock Railroad Company, Inc.

WTLR obtained authority from the Interstate Commerce Commission (ICC) in Finance Docket No. 32796 (60 F.R. 66994, December 27, 1995) to acquire from Seagraves, Whiteface and Lubbock Railroad Company (BA No.3872) (SWGR) and operate approximately 113 miles of rail line, consisting of the following three connecting branch lines: (1) Between milepost 0.0 at Lubbock, Texas (Burlington Northern and Santa Fe connection), and milepost 63.8 at Seagraves, Texas; (2) Between milepost 0.0 at Doud, Texas (connection with SWGR Lubbock to Seagraves line), and milepost 39.2 at Whiteface, Texas; and (3) The Pan American Spur from milepost 36.3 (at Coble, Texas) to "end of track" (approximately 9.3 miles). The ICC decision stated that WTLR would also obtain certain overhead trackage rights.

WTLR began shortline railroad operations and began to compensate its 18 employees on November 1, 1995. It interchanges with the Atchison, Topeka, and Santa Fe (BA No. 1702) and the Burlington Northern (BA No. 1621) railroads at Lubbock, Texas.

Based upon the information summarized above, the Board finds that West Texas and Lubbock Railroad Company, Inc. became a rail carrier employer under the RRA and the RUIA effective November 1, 1995.

Plainview Terminal Company

In ICC Finance Docket No. 32795 (60 F.R. 66988, December 27, 1995), PTC filed a notice of exemption to acquire the operating rights of the Floydada and Plainview Railroad Company (BA No. 3874) to provide local switching service on an approximately 4.6-

mile line of railroad owned by the Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") between Plainview Subdivision milepost 627 plus 1791.7 feet at Plainview, Texas, and Floydada Subdivision milepost 4 plus 3160 feet at Plainview, Texas.

PTC began to conduct switching operations on the Santa Fe tracks in Plainview, Texas on November 1, 1995. PTC provides switching services for three customers on the Santa Fe's track in Plainview. Mr. Bush stated that PTC has no employees and that switching is performed by WTLR employees on an "as needed" basis.

In a telephone conversation on January 31, 1996, Mr. Bush stated that PTC has a switching agreement with Santa Fe, but has no formal agreement with WTLR. Mr. Bush explained that when switching services are needed, a crew from WTLR is contacted and sent out to perform those services. PTC pays a fee to WTLR for the crew and also pays WTLR a fee for the use of a WTLR locomotive.

In cases similar to this, where an entity has authority to operate a rail line, but does not actually operate the line in question, a majority of the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and the RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, a majority of the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

In this case, PTC has been authorized by the ICC to conduct switching operations over the Santa Fe line in question. It has no employees and uses WTLR employees and a WTLR locomotive to perform switching services for its three customers. However, there is no formal agreement between PTC and WTLR, and WTLR has not been recognized by the ICC (or by its successor, the Surface Transportation Board)¹ as the operator of the switching services.

¹Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, abolished the ICC and established the Surface Transportation Board within the Department of Transportation. The Act provides that the Board

EMPLOYER STATUS DETERMINATION**West Texas and Lubbock Railroad Company, Inc.****Plainview Terminal Company**

In fact, PTC, and not WTLR, has an agreement with Santa Fe to provide the switching services. Moreover, since PTC must contact WTLR each time that a crew is needed to conduct switching service and then pays WTLR a fee for both the crew and the use of a WTLR locomotive, PTC remains actively involved in the day-to-day switching operations. The Board therefore finds that Plainview Terminal Company became a rail carrier employer effective November 1, 1995, the date on which switching operations began.

Glen L. Bower

V. M. Speakman, Jr.

Jerome F. Kever

CCCook:SABartholow:MPDadabo:mpd:ik
PLAIN250.cov

shall perform a number of functions previously performed by the ICC.

January 31, 1996

TO: Employer Status File -- Plainview Terminal Company
(PTC)

FROM: Marguerite P. Dadabo
General Attorney

SUBJECT; Telephone Conversation with Larry Bush

I spoke to Larry Bush about how PTC manages to operate switching services without employees. Mr. Bush stated that when switching services are needed, a crew from West Texas and Lubbock Railroad Company, Inc. (WTLR), a shortline railroad also owned by RailAmerica, Inc., is contacted and sent out to do the necessary switching. The WTLR crew is contacted on an "as needed" basis. PTC pays WTLR a fee for the crew and also pays WTLR for use of a WTLR locomotive. PTC has no formal agreement with WTLR. PTC does have an agreement with the Atchison, Topeka, and Santa Fe to provide the switching services. Mr. Bush indicate that that agreement was assigned by the previous operator of switching services (Floydada and Plainview Railroad) to PTC.

TO : The Board

FROM : Catherine C. Cook
General Counsel

SUBJECT: Coverage Determination
West Texas and Lubbock Railroad Company, Inc.
Plainview Terminal Company

Attached is a proposed coverage ruling for Board approval.

Attachment